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09/981,977	10/17/2001	Steve Dispensa	1574	1819
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			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/981,977

Applicant(s)

DISPENSA ET AL.

Examiner

Asad M. Nawaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-60 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 25 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

1. This action is responsive to the amendment filed on February 3, 2005. Claims 1, 19, 20, 39, 40, 45, 59, and 60 have been amended. No new claims have been added. Claims 1-60 are pending.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8, 15-18, 21-28, 35-38, 41-48, and 55-58 are rejected under 35 U.S.C. 102(e) as being anticipated by Giroir et al (US Patent No. 6,829,642).

As to claim 1, Giroir teaches a method of operating a probe device for testing a broadband wireless system, the method comprising: receiving an instruction to execute a plurality of test;(Abstract; col 6, lines 5-30; col 9, lines 47-63)

executing the plurality of tests to measure performance of the broadband wireless communication system based on the instruction;(Abstract; col 6, lines 5-30; col 14, lines 20-25)

determining performance information from the plurality of tests;(col 10, lines 17 - 67)

and storing the performance information in a memory of the probe device.(col 11, lines 15-35 and 39-48)

Claims 21 and 41 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 2, Giroir teaches the method of claim 1 wherein the probe device is located in a sector of the broadband wireless system. (Fig 10, col 6, lines 5-30)

Claims 22 and 42 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 3, Giroir teaches the method of claim 1 wherein the probe device is located in a customer area of the broadband wireless system.(col 13, lines 51-55)

Claims 23 and 43 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 4, Giroir teaches the method of claim 1 wherein one of the plurality of tests comprises a web surfing test.(col 10, lines 17-67; col 11, lines 30-35)

Claims 24 and 44 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 5, Giroir teaches the method of claim 4 wherein the web surfing test comprises transferring a request for a web page and receiving the web page. (col 10, lines 17-67; col 11, lines 30-35)

Claims 25 and 45 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

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As to claim 6, Giroir teaches the method of claim 1 wherein one of the plurality of tests comprises a bulk file transfer test. (col 10, lines 17-67; col 11, lines 30-35)

Claims 26 and 46 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 7, Giroir teaches the method of claim 6 wherein the bulk file transfer test comprises generating and transmitting a request to retrieve files from a file server and receiving the files from the server. (col 10, lines 17-67; col 11, lines 30-35)

Claims 27 and 47 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 8, Giroir teaches the method of claim 6 wherein the bulk file transfer test comprises transmitting files to a file server. (col 10, lines 17-67; col 11, lines 30-35)

Claims 28 and 48 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 15, Giroir teaches the method of claim 1 further comprising transmitting the performance information from the probe device. (Abstract; col 6, 5-15)

Claims 35 and 55 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 16, Giroir teaches the method of claim 1 further comprising retrieving the performance information from the memory. (Abstract; col 11, lines 15-25 and 39-48)

Claims 36 and 56 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 17, Giroir teaches the method of claim 1 wherein the performance information comprises delay.(col 12, lines 3-10)

Claims 37 and 57 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 18, Giroir teaches the method of claim 1 wherein the performance information comprises download speed.(col 10, lines 55-65)

Claims 38 and 58 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 9-12, 19-20, 29-32, 39-40, 49-52, and 59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giroir et al (US Patent No 6,829,642) further in view of Lipa et al (US Patent No 6,061,722).

As to claim 9, Giroir teaches the method of claim 1 but does not explicitly indicate one of the plurality of tests comprising a ping test. Lipa et al, however, teaches the method of claim 1 wherein one of the plurality of tests comprises a ping test to measure delay (col 2, lines 14-18; col 7, lines 10-50).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

Claims 29 and 49 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 10, Giroir teaches the method of claim 1 but does not explicitly indicate one of the plurality of tests comprising a raw channel capacity test. Lipa et al, however, teaches the method of claim 1 wherein one of the plurality of tests comprises a raw channel capacity test.(col 9, lines 1-60)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

Claims 30 and 50 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 11, Lipa et al teaches the method of claim 10 wherein the raw channel capacity tests comprises a bit error rate test. (col 9, lines 1-60)

Claims 31 and 51 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 12, Lipa et al teaches the method of claim 1 wherein one of the plurality of tests comprises a forward error correction test. (col 9, lines 1-60)

Claims 32 and 52 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 19, Giroir teaches the method of claim 1 but does not explicitly indicate the performance information comprising a the number of dropped packets. Lipa et al, however, teaches the method of claim 1 wherein the performance information comprises number of dropped packets.(col 2, lines 14-18)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

Claims 39 and 59 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 20, Giroir teaches the method of claim 1 but does not explicitly indicate the performance information being the number of acknowledgment packets.

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Lipa et al, however, teaches the method of claim 1 wherein the performance information comprises number of acknowledgement packets.(Fig 4; col 9, 10-30)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

Claims 40 and 60 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

4. Claims 13-14, 33-34 and 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giroir (US Patent 6,829,642), and further in view of Fijolek et al (US Patent No 6,553,568).

As to claim 13, Giroir teaches the method of claim 1 but does not explicitly indicate one of the plurality of tests comprising an out of lock indicator test. wherein one of the plurality of tests comprises an out of lock indicator test. (col 8, lines 10-40)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the

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need for multiple devices, their drivers, and many other components that require system resources.

Claims 33 and 53 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

As to claim 14, Fijolek teaches the method of claim 13 wherein the out of lock indicator test comprises determining a presence of a clean Quadrature Amplitude Modulation signal.(col 8, lines 10-40)

Claims 34 and 54 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

### ***Response to Arguments***

5. Applicant's arguments filed have been fully considered but they are not persuasive.

6. In the remarks, the applicant argues in substance that A) Giroir does not disclose a wireless system of any kind and B) Giroir does not indicate that the probe receives any kind of instruction to execute a test.

7. In response to A), Giroir does disclose a wireless system. Giroir teaches that their invention can be implemented in a wireless environment. Giroir also discloses that mobile users would benefit from the seamless and optimized service provided to mobile users. (col 4, lines 22-25) Prior art, as taught in figure 1, also discloses an availability and response time probe in a wireless environment. (connection between 101 and 102) Therefore, Giroir meets the scope of the limitation as claimed.

In response to B), Giroir does indicate that the probe receives an instruction to execute a test. Giroir discloses that the end user first starts the Client when he wants to access one or more SNA applications. (col 9, lines 47-63) The starting of the client, as evident in claim 7 (and its description), is essentially the instruction to execute the availability and response time probe. Thus, Giroir meets the scope of the limitation as claimed.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asad M. Nawaz whose telephone number is (571) 272-3988. The examiner can normally be reached on M-F 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AMN

  
BHARAT BAROT  
PRIMARY EXAMINER